

106TH CONGRESS
1ST SESSION

H. R. 30

To protect consumers and financial institutions by preventing personal financial information from being obtained from financial institutions under false pretenses.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 1999

Mr. LEACH (for himself, Mrs. ROUKEMA, Mr. LAZIO, Mr. CASTLE, Mr. LAFALCE, Mr. HINCHEY, and Mr. VENTO) introduced the following bill; which was referred to the Committee on Banking and Financial Services

A BILL

To protect consumers and financial institutions by preventing personal financial information from being obtained from financial institutions under false pretenses.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Financial Information
5 Privacy Act of 1999”.

6 **SEC. 2. FINANCIAL INFORMATION PRIVACY.**

7 The Consumer Credit Protection Act (15 U.S.C.
8 1601 et seq.) is amended by adding at the end the follow-
9 ing:

1 **“TITLE X—FINANCIAL INFORMA-**
 2 **TION PRIVACY PROTECTION**

3 **“SEC. 1001. SHORT TITLE; TABLE OF CONTENTS.**

4 “(a) SHORT TITLE.—This title may be cited as the
 5 ‘Financial Information Privacy Act of 1999’.

6 “(b) TABLE OF CONTENTS.—The table of contents
 7 for this title is as follows:

“TITLE X—FINANCIAL INFORMATION PRIVACY PROTECTION

“Sec. 1001. Short title; table of contents.

“Sec. 1002. Definitions.

“Sec. 1003. Privacy protection for customer information of financial institu-
 tions.

“Sec. 1004. Administrative enforcement.

“Sec. 1005. Civil liability.

“Sec. 1006. Criminal penalty.

“Sec. 1007. Relation to State laws.

“Sec. 1008. Agency guidance.

8 **“SEC. 1002. DEFINITIONS.**

9 “For purposes of this title, the following definitions
 10 shall apply:

11 “(1) CUSTOMER.—The term ‘customer’ means,
 12 with respect to a financial institution, any person (or
 13 authorized representative of a person) to whom the
 14 financial institution provides a product or service,
 15 including that of acting as a fiduciary.

16 “(2) CUSTOMER INFORMATION OF A FINANCIAL
 17 INSTITUTION.—The term ‘customer information of a
 18 financial institution’ means any information main-
 19 tained by a financial institution which is derived
 20 from the relationship between the financial institu-

1 tion and a customer of the financial institution and
2 is identified with the customer.

3 “(3) DOCUMENT.—The term ‘document’ means
4 any information in any form.

5 “(4) FINANCIAL INSTITUTION.—

6 “(A) IN GENERAL.—The term ‘financial
7 institution’ means any institution engaged in
8 the business of providing financial services to
9 customers who maintain a credit, deposit, trust,
10 or other financial account or relationship with
11 the institution.

12 “(B) CERTAIN FINANCIAL INSTITUTIONS
13 SPECIFICALLY INCLUDED.—The term ‘financial
14 institution’ includes any depository institution
15 (as defined in section 19(b)(1)(A) of the Fed-
16 eral Reserve Act), any loan or finance company,
17 any credit card issuer or operator of a credit
18 card system, and any consumer reporting agen-
19 cy that compiles and maintains files on consum-
20 ers on a nationwide basis (as defined in section
21 603(p)).

22 “(C) FURTHER DEFINITION BY REGULA-
23 TION.—The Board of Governors of the Federal
24 Reserve System may prescribe regulations fur-
25 ther defining the term ‘financial institution’, in

1 accordance with subparagraph (A), for purposes
2 of this title.

3 **“SEC. 1003. PRIVACY PROTECTION FOR CUSTOMER INFOR-**
4 **MATION OF FINANCIAL INSTITUTIONS.**

5 “(a) PROHIBITION ON OBTAINING CUSTOMER INFOR-
6 MATION BY FALSE PRETENSES.—It shall be a violation
7 of this title for any person to obtain or attempt to obtain,
8 or cause to be disclosed or attempt to cause to be disclosed
9 to any person, customer information of a financial institu-
10 tion relating to another person—

11 “(1) by knowingly making a false, fictitious, or
12 fraudulent statement or representation to an officer,
13 employee, or agent of a financial institution with the
14 intent to deceive the officer, employee, or agent into
15 relying on that statement or representation for pur-
16 poses of releasing the customer information;

17 “(2) by knowingly making a false, fictitious, or
18 fraudulent statement or representation to a cus-
19 tomer of a financial institution with the intent to de-
20 ceive the customer into relying on that statement or
21 representation for purposes of releasing the cus-
22 tomer information or authorizing the release of such
23 information; or

24 “(3) by knowingly providing any document to
25 an officer, employee, or agent of a financial institu-

1 tion, knowing that the document is forged, counter-
2 feit, lost, or stolen, was fraudulently obtained, or
3 contains a false, fictitious, or fraudulent statement
4 or representation, if the document is provided with
5 the intent to deceive the officer, employee, or agent
6 into relying on that document for purposes of releas-
7 ing the customer information.

8 “(b) PROHIBITION ON SOLICITATION OF A PERSON
9 TO OBTAIN CUSTOMER INFORMATION FROM A FINANCIAL
10 INSTITUTION UNDER FALSE PRETENSES.—It shall be a
11 violation of this title to request a person to obtain cus-
12 tomer information of a financial institution, knowing or
13 consciously avoiding knowing that the person will obtain,
14 or attempt to obtain, the information from the institution
15 in any manner described in subsection (a).

16 “(c) NONAPPLICABILITY TO LAW ENFORCEMENT
17 AGENCIES.—No provision of this section shall be con-
18 strued so as to prevent any action by a law enforcement
19 agency, or any officer, employee, or agent of such agency,
20 to obtain customer information of a financial institution
21 in connection with the performance of the official duties
22 of the agency.

23 “(d) NONAPPLICABILITY TO FINANCIAL INSTITU-
24 TIONS IN CERTAIN CASES.—No provision of this section
25 shall be construed to prevent any financial institution, or

1 any officer, employee, or agent of a financial institution,
 2 from obtaining customer information of such financial in-
 3 stitution in the course of—

4 “(1) testing the security procedures or systems
 5 of such institution for maintaining the confidential-
 6 ity of customer information;

7 “(2) investigating allegations of misconduct or
 8 negligence on the part of any officer, employee, or
 9 agent of the financial institution; or

10 “(3) recovering customer information of the fi-
 11 nancial institution which was obtained or received by
 12 another person in any manner described in sub-
 13 section (a) or (b).

14 “(e) NONAPPLICABILITY TO CERTAIN TYPES OF
 15 CUSTOMER INFORMATION OF FINANCIAL INSTITU-
 16 TIONS.—No provision of this section shall be construed to
 17 prevent any person from obtaining customer information
 18 of a financial institution that otherwise is available as a
 19 public record filed pursuant to the securities laws (as de-
 20 fined in section 3(a)(47) of the Securities Exchange Act
 21 of 1934).

22 **“SEC. 1004. ADMINISTRATIVE ENFORCEMENT.**

23 “(a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
 24 SION.—Except as provided in subsection (b), compliance
 25 with this title shall be enforced by the Federal Trade Com-

1 mission in the same manner and with the same power and
 2 authority as the Commission has under the Fair Debt Col-
 3 lection Practices Act to enforce compliance with that title.

4 “(b) ENFORCEMENT BY OTHER AGENCIES IN CER-
 5 TAIN CASES.—

6 “(1) IN GENERAL.—Compliance with this title
 7 shall be enforced under—

8 “(A) section 8 of the Federal Deposit In-
 9 surance Act, in the case of—

10 “(i) national banks, and Federal
 11 branches and Federal agencies of foreign
 12 banks, by the Office of the Comptroller of
 13 the Currency;

14 “(ii) member banks of the Federal
 15 Reserve System (other than national
 16 banks), branches and agencies of foreign
 17 banks (other than Federal branches, Fed-
 18 eral agencies, and insured State branches
 19 of foreign banks), commercial lending com-
 20 panies owned or controlled by foreign
 21 banks, and organizations operating under
 22 section 25 or 25A of the Federal Reserve
 23 Act, by the Board;

24 “(iii) banks insured by the Federal
 25 Deposit Insurance Corporation (other than

1 members of the Federal Reserve System
2 and national nonmember banks) and in-
3 sured State branches of foreign banks, by
4 the Board of Directors of the Federal De-
5 posit Insurance Corporation; and

6 “(iv) savings associations the deposits
7 of which are insured by the Federal De-
8 posit Insurance Corporation, by the Direc-
9 tor of the Office of Thrift Supervision; and

10 “(B) the Federal Credit Union Act, by the
11 Administrator of the National Credit Union Ad-
12 ministration with respect to any Federal credit
13 union.

14 “(2) VIOLATIONS OF THIS TITLE TREATED AS
15 VIOLATIONS OF OTHER LAWS.—For the purpose of
16 the exercise by any agency referred to in paragraph
17 (1) of its powers under any Act referred to in that
18 paragraph, a violation of this title shall be deemed
19 to be a violation of a requirement imposed under
20 that Act. In addition to its powers under any provi-
21 sion of law specifically referred to in paragraph (1),
22 each of the agencies referred to in that paragraph
23 may exercise, for the purpose of enforcing compli-
24 ance with this title, any other authority conferred on
25 such agency by law.

1 “(c) STATE ACTION FOR VIOLATIONS.—

2 “(1) AUTHORITY OF STATES.—In addition to
3 such other remedies as are provided under State
4 law, if the chief law enforcement officer of a State,
5 or an official or agency designated by a State, has
6 reason to believe that any person has violated or is
7 violating this title, the State—

8 “(A) may bring an action to enjoin such
9 violation in any appropriate United States dis-
10 trict court or in any other court of competent
11 jurisdiction;

12 “(B) may bring an action on behalf of the
13 residents of the State to recover damages of not
14 more than \$1,000 for each violation; and

15 “(C) in the case of any successful action
16 under subparagraph (A) or (B), shall be award-
17 ed the costs of the action and reasonable attor-
18 ney fees as determined by the court.

19 “(2) RIGHTS OF FEDERAL REGULATORS.—

20 “(A) PRIOR NOTICE.—The State shall
21 serve prior written notice of any action under
22 paragraph (1) upon the Federal Trade Commis-
23 sion and, in the case of an action which involves
24 a financial institution described in section
25 1004(b)(1), the agency referred to in such sec-

tion with respect to such institution and provide the Federal Trade Commission and any such agency with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action.

“(B) RIGHT TO INTERVENE.—The Federal Trade Commission or an agency described in subsection (b) shall have the right—

“(i) to intervene in an action under paragraph (1);

“(ii) upon so intervening, to be heard on all matters arising therein;

“(iii) to remove the action to the appropriate United States district court; and

“(iv) to file petitions for appeal.

“(3) INVESTIGATORY POWERS.—For purposes of bringing any action under this subsection, no provision of this subsection shall be construed as preventing the chief law enforcement officer, or an official or agency designated by a State, from exercising the powers conferred on the chief law enforcement officer or such official by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses

1 or the production of documentary and other evi-
2 dence.

3 “(4) LIMITATION ON STATE ACTION WHILE
4 FEDERAL ACTION PENDING.—If the Federal Trade
5 Commission or any agency described in subsection
6 (b) has instituted a civil action for a violation of this
7 title, no State may, during the pendency of such ac-
8 tion, bring an action under this section against any
9 defendant named in the complaint of the Federal
10 Trade Commission or such agency for any violation
11 of this title that is alleged in that complaint.

12 **“SEC. 1005. CIVIL LIABILITY.**

13 “Any person, other than a financial institution, who
14 fails to comply with any provision of this title with respect
15 to any financial institution or any customer information
16 of a financial institution shall be liable to such financial
17 institution or the customer to whom such information re-
18 lates in an amount equal to the sum of the amounts deter-
19 mined under each of the following paragraphs:

20 “(1) ACTUAL DAMAGES.—The greater of—

21 “(A) the amount of any actual damage
22 sustained by the financial institution or cus-
23 tomer as a result of such failure; or

24 “(B) any amount received by the person
25 who failed to comply with this title, including

1 an amount equal to the value of any nonmone-
2 tary consideration, as a result of the action
3 which constitutes such failure.

4 “(2) ADDITIONAL DAMAGES.—Such additional
5 amount as the court may allow.

6 “(3) ATTORNEYS’ FEES.—In the case of any
7 successful action to enforce any liability under para-
8 graph (1) or (2), the costs of the action, together
9 with reasonable attorneys’ fees.

10 **“SEC. 1006. CRIMINAL PENALTY.**

11 “(a) IN GENERAL.—Whoever violates, or attempts to
12 violate, section 1003 shall be fined in accordance with title
13 18, United States Code, or imprisoned for not more than
14 5 years, or both.

15 “(b) ENHANCED PENALTY FOR AGGRAVATED
16 CASES.—Whoever violates, or attempts to violate, section
17 1003 while violating another law of the United States or
18 as part of a pattern of any illegal activity involving more
19 than \$100,000 in a 12-month period shall be fined twice
20 the amount provided in subsection (b)(3) or (c)(3) (as the
21 case may be) of section 3571 of title 18, United States
22 Code, imprisoned for not more than 10 years, or both.

23 **“SEC. 1007. RELATION TO STATE LAWS.**

24 “(a) IN GENERAL.—This title shall not be construed
25 as superseding, altering, or affecting the statutes, regula-

1 tions, orders, or interpretations in effect in any State, ex-
2 cept to the extent that such statutes, regulations, orders,
3 or interpretations are inconsistent with the provisions of
4 this title, and then only to the extent of the inconsistency.

5 “(b) GREATER PROTECTION UNDER STATE LAW.—
6 For purposes of this section, a State statute, regulation,
7 order, or interpretation is not inconsistent with the provi-
8 sions of this title if the protection such statute, regulation,
9 order, or interpretation affords any person is greater than
10 the protection provided under this title.

11 **“SEC. 1008. AGENCY GUIDANCE.**

12 “In furtherance of the objectives of this title, each
13 Federal banking agency (as defined in section 3(z) of the
14 Federal Deposit Insurance Act) shall issue advisories to
15 depository institutions under the jurisdiction of the agen-
16 cy, in order to assist such depository institutions in deter-
17 ring and detecting activities proscribed under section
18 1003.”.

19 **SEC. 3. REPORT TO CONGRESS ON FINANCIAL PRIVACY.**

20 Not later than 18 months after the date of enactment
21 of this Act, the Comptroller General of the United States,
22 in consultation with the Federal Trade Commission, the
23 Federal banking agencies, and other appropriate Federal
24 law enforcement agencies, shall submit to the Congress a
25 report on—

1 (1) the efficacy and adequacy of the remedies
2 provided in the amendments made by section 501 in
3 addressing attempts to obtain financial information
4 by fraudulent means or by false pretenses; and

5 (2) any recommendations for additional legisla-
6 tive or regulatory action to address threats to the
7 privacy of financial information created by attempts
8 to obtain information by fraudulent means or false
9 pretenses.

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